IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 4642 of 2000
Date of Decision: 2.8.2006

Prabhu Lal ...Appellant

Versus

Laxmi and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri G.S. Punia, Advocate, for the appellant.
Shri Sita Ram, respondent No. 4 in person.
Shri Lokesh Sinhal, Advocate, for respondent No.11.

JUDGMENT

The challenge in the present second appeal is to the judgment and decree passed by the Courts below, whereby the suit for declaration filed by the plaintiff-respondents No. 1 to 10 challenging consent decree dated 15.12.1981, was decreed.

One Nirmal Dass was the owner of the suit property comprising of agricultural land and the house etc. After his death, his estate was inherited by his wife Bharwan Bai (widow), Ram Kishan, Radha Krishan, Hari Narain, Sita Ram, Prabhu Lal sons, Smt. Jamuna Devi and Radha Rani daughters. As per the defendant-appellant, the parties had entered into a family settlement a year prior to sufferance of a consent decree on 15.12.1981 and, therefore, by virtue of family settlement recognised by consent decree, he is owner and in possession of the suit land. It is also the case of the appellant that sometime in the year 1972, a loan was taken for purchase of tractor in the name of Sita Ram for the family on 20.7.1972, but the same could not be repaid. The liability to pay such loan was taken over

by the appellant. The parties entered into a family settlement according to which the liability to settle the account of the Bank was of the appellant as the other co-sharers agreed to transfer their share in the land to the appellant and in respect of which, decree was passed on 15.12.1981. In the said suit, admission written statement dated 12.12.1981 was filed after the same was signed/thumb marked by Smt. Bharwan, Jamuna Devi, Radha Devi, Ram Kishan, Hari Narain for himself and his brothers Radha Krishan and Sita Ram. On the same date, Bharwan, Ram Kishan, Hari Narain for himself and for his brothers, Radha Devi, Smt. Jamuna Devi and Radha Devi, suffered statement accepting the claim of the plaintiff along with their counsel Shri B.P. Yadav. On the basis of said statement, decree was passed on 15.12.1981.

Such decree was challenged in the suit for declaration filed on 21.12.1987 by Radha Krishan, Sita Ram, Ram Kishan and Radha Rani on the ground that the plaintiffs have never signed or thumb marked any document admitting the claim of the appellant nor made any statement admitting the claim of the appellant. It was also pleaded that the plaintiffs have never engaged any counsel on their behalf and no notice was issued. Plaintiffs Sita Ram and Radha Krishan are alleged to have executed a Power of Attorney dated 7.12.1981 in favour of Hari Narain. The said Power of Attorney is illegal & void and the same was never read over and explained to the plaintiffs. The Power of Attorney is dated 7.12.1981, whereas the same was purported to be executed to defend the suit filed on 8.12.1981. The original plaint filed on 8.12.1981was in respect of agricultural land but the same was amended on 9.12.1981 to include the house and the plot along with agricultural land. The decree was sought to be avoided on the

ground that except Radha Krishan and Sita Ram, all other plaintiffs and their mother Bharwan are illiterate persons. It was admitted that the loan was taken from the Bank for the purchase of the tractor but the same could not have been paid back. It is pointed out that it was decided amongst the family members that defendant Nos. 1 Prabhu Lal, would pursue the said petition filed by the Bank for recovery.

The parties led voluminous evidence in support of their respective pleas. After considering such evidence, both the Courts below have returned a finding that the Power of Attorney purported to be given by Radha Krishan and Sita Ram in favour of Hari Narain is not proved to be executed and that the statement made by Hari Narain on 12.12.1981 admitting the claim of the plaintiffs (the present appellant) is not binding on the said defendants. The Court also returned a finding that the decree is in favour of a person, who had no pre-existing rights and thus, the decree passed is not valid and operative. The learned trial Court, thus, decreed the suit holding that the decree dated 15.12.1981 is not binding on the plaintiffs. The appeal against the said judgment and decree has been dismissed.

The appellant has raised the following substantial questions of law in the present appeal:-

1. Whether the suit of plaintiff Nos. 3 and 4 could be decreed even though, there is sufficient evidence on record to return a finding that plaintiff Nos. 3 and 4 have suffered decree on 15.12.1981?
2. Whether the suit of plaintiff Nos. 1 and 2 can be decreed on the basis of non-execution of Power of

Attorney when plaintiff Nos. 1 and 2 have not appeared as a witness?

3. Whether the findings recorded by the Courts below are based upon misreading of evidence and by ignoring the material evidence led by the defendant-appellant?
4. Whether the defendant-appellant has any pre-existing rights in the property in respect of which the plaintiffs could have suffered decree?

After going through the record, I find that PW6 Ram Kishan has admitted the outstanding loan in respect of purchase of tractor and that signatures of his mother and sisters were obtained in Gurgaon in one room, where one person was sitting but he does not remember that how many papers were signed by him. He admits signatures of his sisters Radha Rani, Jamuna Devi and that of his mother Bharwan Bai as such signatures/thumb impressions were obtained at the same time. He admits his signatures on the Vakalatnama. He further states that such signatures/thumb impressions were for the purpose of the recovery suit. He states that there was a settlement amongst the family members that Prabhu Lal (the appellant) should defend the recovery proceedings initiated by the Bank. The case of the plaintiff is simple denial in the pleadings whereas in evidence, the plaintiffs have admitted their signatures/thumb impressions on the Power of Attorney and settlement. It has also come in evidence that their signatures were obtained in a room where one person was sitting is in fact, refers to the Court. Such was not the stand of the plaintiffs in the plaint. Apart from Ram Kishan PW6, the plaintiffs have produced Ram Kishan Gera son of Devi Dass, husband of Radha Rani as PW7. He also admits that in

execution of recovery suit of the Bank, the land was attached and through settlement amongst the members of the family it was agreed that execution will be defended by defendant No.1. However, the said witness was not appointed as attorney of Radha Rani. The plaintiffs have examined Radha as PW8, who has deposed that she has signed the papers for the purpose of loan repayment. The papers were signed to enable Prabhu Lal to satisfy the decree alone. She has admitted her signatures on Vakalatnama, written statement and the statement given in the Court. She deposed that she has gone inside alone but she cannot tell that it was a Court room or not. She has deposed that Jamuna Devi, Ram Kishan, Bharwan Bai, Hari Narain, were standing outside the Court. Even her husband appearing as PW7 had admitted signatures of his wife on Vakalatnama, written statement and the statement in Court dated 12.12.1981. On the other hand, the defendant-appellant has examined Lal Chand Reader of the Court, who recorded compromise as DW1. He has deposed that statements were written by him at the directions of the Court and the parties signed/thumb marked after accepting the same including their lawyer/Advocates. The finding recorded by the Courts below that the settlement is made by illiterate simpleton ladies and, therefore, not binding, is again not based upon any rationale. The statements are proved to be made in the Court. The Court official appeared has deposed that the same were read over and accepted to be correct. The Court proceedings carry presumption of correctness. Merely on the basis of illiteracy, such statements cannot be put to naught. Such course is, in fact, fraught with danger. Illiteracy cannot override the presumption of correctness to the Court proceedings. If it is allowed then the Court proceedings can be disputed on change of mind subsequently.

Thus, the said finding is wholly unsustainable.

The decree was challenged on the ground that the said plaintiffs have never consciously signed or thumb marked any such document admitting the claim of the appellant. But, from the evidence on record statements of Ram Kishan and Radha Rani are proved to have been made in the normal course. It is not open to the said plaintiffs to avoid the decree on that ground alone. It is admitted by PW6 and PW8 that they have signed the statement and such statement is proved to have been made in the Court. The learned trial Court has not given any finding in respect of their signatures appearing on Vakalatnama, written statement and the statement in the Court. Primarily, the Courts below have examined the validity of the decree suffered by plaintiff Nos. 1 and 2 on the basis of Special Power of Attorney. Therefore, in respect of first substantial question of law, I find that the Courts below have not taken into consideration the evidence on record, which proves that plaintiff Nos. 3 and 4 have suffered a decree on the said date. Thus, it is not open at all to the plaintiffs No. 3 and 4 Ram Kishan and Radha Rani to dispute the decree on the ground that the same was not signed by them and that they have never appeared or engaged any counsel.

In respect of decree suffered by plaintiff Nos. 1 and 2, the Courts below have laid much emphasis on the fact that the Power of Attorney was executed on 7.12.1981 i.e. a day before the filing of the suit and that the name of the Court is not referred and that the name of Bharwan Bai has been added subsequently. The Courts have also taken into consideration that such Special Power of Attorney does not permit the attorney to admit the claim of the plaintiffs though the power of

compromise the suit was specifically given in the said Power of Attorney. Neither Radha Krishan nor Sita Ram has appeared as a witness, to depose that the Power of Attorney was not executed by them in favour of Hari Narain. Each of the plaintiffs have independent right in respect of his share of the property. They have sought to avoid the decree on the common grounds. It is proved that the decree was suffered by Ram Kishan, Radha Rani plaintiffs No. 3 and 4. Plaintiff Nos. 1 and 2 have to stand independently to prove that Hari Narain was not their attorney. To prove Special Power of Attorney, the defendant has examined DW4 Kishan Chand, son of the Scribe, who has proved entry DW4/1 in the register of deed writer. DW5 Brahm Prakash is the Advocate, who has appeared for plaintiffs in the previous suit and filed admission written statement. DW1 Lal Chand has deposed that the suit was filed on 7.12.1981. It is the categorical case of the appellant that the loan was raised for the income of the family and the decree of the Bank was against all the legal heirs of Nirmal Dass. If the decree for the recovery of loan was passed against all the legal heirs, what could be circumstances, which would prompt Prabhu Lal to take over the liability of all other heirs to satisfy the decree. There is no explanation on record to this aspect. Thus, it is apparent that on account of the decree passed against all the legal heirs, Prabhu Lal had taken up the responsibility to satisfy such decree to maintain family honour but after the other legal heirs relinquished their rights in the land. In fact, DW15/1 is the letter written by Radha Krishan on 26.6.1980 to the appellant informing him that the Bank has passed an order of sale of land. It has also come on record that it is the appellants, who has settled the Bank account in the year 1997. Thus, it is apparent that the loan, which was the responsibility of all the

legal heirs, was satisfied only by the appellant. As per the appellant such settlement was effected on the basis of a family settlement, wherein the other family members relinquished their share in the property in lieu of the loan of the Bank to be satisfied by the appellant.

The Courts below have returned a finding that such settlement was in fact, transfer of all rights in a property valued more than Rs.1 lac and, therefore, required to be effected only by a registered document. However, the Courts have overlooked the fact that the settlement in respect of family liability was between the members of the family and one member has taken up the responsibility to satisfy the claim of the Bank but the other members relinquished their shares. It was a settlement of assets and liabilities amongst the family members in a cordial atmosphere. Such settlement is not transfer of any rights, which would require registration. The family members arrived at a settlement in a particular manner and the same cannot be said to be for consideration only for the reason that one of the members have taken up the responsibility to satisfy a Bank's decree. In fact, the Hon'ble Supreme Court in **Hari Shankar Singhania & Others Vs. Guar Hari Singhania & Others** **2006 AIR Supreme Court Weekly 3330**, reviewed the entire case law on the question of family settlement and it was found that it has to be treated differently from any other formal commercial settlement in the eyes of law ensures peace and goodwill among the family members. Such settlements are governed by a special equity principle where the terms are fair and bona-fide, taking into account the well being of a family. It was held to the following effect:-

> "43. Another fact that assumes importance at this stage is that, a family settlement is treated differently from any other formal

commercial settlement as such settlement in the eyes of law ensures peace and goodwill among the family members. Such family settlement generally meets with approval of the Courts. Such settlements are governed by a special equity principle where the terms are fair and bona-fide, taking into account the well being of a family.

44. The concept of *`family arrangement or settlement'* and the present one in hand, in our opinion, should be treated differently. Technicalities of limitation etc. should not be put at risk of the implementation of a settlement *drawn by a family, which is essential for maintaining peace and harmony in a family*. Also it can be seen from decided cases of this Court that, any such arrangement would be upheld if family settlements were entered into ally disputes *existing or apprehended* and even any dispute or difference apart, if *it was entered into bona fide to maintain peace or to bring about harmony in the family*. Even a semblance of a claim or some other ground, as say affection, may suffice as observed by this Court in the case of *Ram Charan v. Girija Nandini, AIR 1966 SC 323.*"

In view of the said principle, it has come on record that the other family members were not ready and willing to satisfy the decree passed in favour of the Bak, which is apparent from the oral testimony of the witnesses, who have deposed to the effect that it was the appellant, who was to satisfy such decree. It has not been explained why one person should take up the responsibility of all the legal heirs. The necessary inference is

the family settlement as propounded by the appellant. Since plaintiff Nos. 1 and 2 have not appeared as a witness to depose in respect of lack of authority granted to Hari Narain to give statement on their behalf and the fact that such Power of Attorney is proved to be executed on the basis of statement of son of deed writer and the statement of DW8 Sardar Singh Reader to City Magistrate, who has proved the attestation of the Power of Attorney by Shri Bishna Ram, the then Tehsildar. The finding recorded by the Courts below that there was no authority in the Attorney to admit the claim of the plaintiff, is in fact, misreading of the document. Once, there is power to compromise, that will include the power to admit the claim of the plaintiff as well. The absence of the name of the Court or the fact that the name of Bharwan Bai was written subsequently, are wholly inconsequential as admittedly, there was no other litigation pending except the recovery proceedings initiated by the Bank. There is no reference of Bank in the said Power of Attorney. Since the Power of Attorney was executed on the said day or even a day earlier, the absence of the name of the Court, would be inconsequential as such power of Attorney could not be related to any other lis between the parties. The argument that only part of the suit land was mortgaged, whereas the decree is in respect of the entire land, house and the plot, is again not relevant. The plaintiffs have suffered a consent decree admitting the claim of the present appellant. The loan of the Bank was prime reason for compelling the parties to enter into a settlement but the mode and manner of the settlement cannot be disputed by the plaintiffs have having suffered statement to that effect in Court. Reference has been made to a criminal complaint filed by Laxmi Devi wife of Radha Krishan. However, the said complaint was withdrawn on 6.1.1982 vide Exhibit P.36,

i.e. soon after the statement was recorded in the Court on 15.12.1981. In fact, the withdrawal of the criminal complaint is a strong factor to hold that there was settlement of dispute between the parties and before the parties could change their view on such statement. Still further, the incorporation of the decree in the revenue record is wholly inconsequential, in as much as the revenue record is not documents of title. Mere delay in incorporating the decree in the revenue record, cannot be a circumstance to hold that the decree suffered is void.

Therefore, in respect of second substantial question of law, I am of the opinion that the finding recorded by the Courts below that on the basis of Power of Attorney, there could not be any decree passed against plaintiff Nos. 1 and 2 is wholly illegal and not sustainable, in as much as the same is based upon conjectures and surmises and on the basis of misreading of evidence and the fact that plaintiff Nos. 1 and 2 have not stepped into the witness box in respect of execution of Power of Attorney in favour of Hari Narain.

It has been stated that the appellant has no pre-existing right in any 8/10th share. In this regard reliance is placed upon **Ranbir Singh v. Shri Chand** **1984 PLJ 562**, **Smt. Sheela Wati v. Smt.Chand Kaur and others** **1996 HRR 584** and **Bhoop Singh v. Ram Singh Major and others** **AIR 1996 SC 196.** The judgments referred to by the respondent are not applicable in the facts of the present case. The parties are brothers and sisters being legal heirs of one Nirmal Dass. In such a situation, the defendant-appellant had an interest in the joint family. Once, the appellant has a semblance of right, then in view of the judgment of the Hon'ble Supreme Court in **Hari Shankar Singhania's case (supra)**, the decree

could be passed in his favour as such decree is based upon a family arrangement. The findings recorded by the Courts below are thus, not sustainable as it is not a case of decree being suffered in favour of a stranger but the decree has been passed in favour of one of the brothers on the basis of a settlement amongst the family members. By virtue of the settlement, the extent of the share of the appellant has been crystallised. The appellant is not stranger but is part of a family. The family settlement is arrived at for maintaining peace and harmony in the family. In the present case, the decree of the Bank was to be executed but the appellant took over the responsibility to satisfy the decree when the other co-sharers gave up their rights in the property in favour of the appellant. Therefore, the judgments referred to have no applicability in the facts of the present case. Therefore, in respect of fourth substantial question of law, it is held that the defendant has a pre-existing right in respect of which, the plaintiff could suffer a consent decree.

Thus, I am of the opinion that the judgment and decree passed by the Courts are wholly unsustainable. Consequently, the same are set aside. The appeal is allowed. The suit for declaration is dismissed with no order as to costs.

August 2, 2006 (HEMANT GUPTA)
ds JUDGE